

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 25, 2002

TO: ALL PARTIES OF RECORD IN APPLICATION 01-06-029

Decision 02-07-036 is being mailed without the Joint Dissent of President Lynch and Commissioner Wood. The Dissent will be mailed separately.

Very truly yours,

/s/ CARL K. OSHIRO
Carl K. Oshiro, Interim Chief
Administrative Law Judge

CKO:acb

Attachment

Decision **02-07-036** July 17, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wild Goose Storage, Inc. to
Amend its Certificate of Public Convenience and
Necessity to Expand and Construct Facilities for
Gas Storage Operation.

Application 01-06-029
(Filed June 18, 2001)

(See Attachment A for List of Appearances.)

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**OPINION ON APPLICATION OF WILD GOOSE STORAGE INC.
TO AMEND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY AND TO EXPAND ITS GAS STORAGE FACILITIES**

1. Summary

Applicant Wild Goose Storage Inc. (Wild Goose) seeks an amendment of its certificate of public convenience and necessity (CPCN) to expand its gas storage facilities in Butte County by 15 billion cubic feet (Bcf) and to connect the expanded facility to the major transmission pipeline owned by Pacific Gas and Electric Company (PG&E), Line 400/401, near the Delevan Compressor Station in Colusa County. Wild Goose asks that we authorize it to offer this additional storage capacity and related services at market-based rates. We authorize the expansion project and market-rate authority for it, but prohibit Wild Goose from engaging in any storage or hub services transactions with its parent company or any affiliate controlled by its parent company.¹ We also require Wild Goose to comply with other reporting requirements as detailed herein, so that we may monitor developments in the evolving marketplace. In addition, we commit the Commission to undertaking a thorough review of and potential revisions to its 1997 Affiliates Transactions Rules, as they apply to independent storage companies, in R.01-01-001, a proceeding to which Wild Goose is already a respondent.

The decision also certifies the Environmental Impact Report (EIR) for the Wild Goose expansion project and further conditions the CPCN on mitigations set forth in the EIR. Because one significant environmental effect of the project,

¹ This prohibition applies to the Wild Goose project only and is not intended as precedential toward any other independent storage operations.

the permanent loss of a minimum of 5.8 acres of prime farmland to non-agricultural use, cannot be avoided or mitigated, we issue a statement of overriding consideration, in light of the significant local support for the expansion project and the benefits to the state of additional gas storage.

We decline to open a Phase III of this proceeding, or another proceeding, to further examine the need for expansion of PG&E's "backbone" transmission capacity or the cost allocation of such an expansion. The record establishes that adequate transportation capacity exists to serve demands for storage injection. Whether or not the backbone will be able to serve all demands for storage withdrawal at peak demand periods is uncertain, but the record indicates that a substantial amount of capacity will be available. Should capacity constraints develop, we conclude that the Gas Storage Rules require that "as-available" or "interruptible" transportation capacity should be allocated among all customers for that capacity, on a pro rata basis. We direct PG&E to file an advice letter with proposed tariffs, consistent with our decision, within 45 days of the effective date of this decision.

2. Background

2.1 Wild Goose and the Existing Facility

Wild Goose, a Delaware corporation, is a wholly owned subsidiary of Alberta Energy Company Ltd. (AEC), a major Canadian oil and gas producer. D.97-06-091 granted Wild Goose a CPCN to develop, construct and operate an underground natural gas storage facility in Butte County on the site of an abandoned, underground natural gas field located approximately 50 miles north of Sacramento. The CPCN authorizes Wild Goose to provide firm and interruptible storage service at market-based rates. (D.97-06-091, 73 CPUC2d 90.)

The storage field and related facilities interconnect with Line 167 of PG&E's Sacramento Valley Local Transmission System, the major gas transmission line serving the Sacramento area. The certificated facility consists of 14 Bcf of working gas with maximum firm daily injection of 80 million cubic feet per day (MMcf/d) and maximum firm daily withdrawals of 200 MMcf/d.

Though Wild Goose was the first independent storage provider in California, it is no longer the only one. In May 2000 the Commission granted a CPCN to Lodi Gas Storage, LLC (Lodi) to build and operate an underground storage facility in San Joaquin County. (D.00-05-048, 2000 Cal. PUC LEXIS 394.) The Lodi decision reviews the development of independent gas storage in California, tracing some of the underlying policy changes at both federal and state levels that altered the structure of the natural gas industry over the last two decades. Noteworthy developments for independent gas storage in California include the enactment in 1992 of Assembly Bill (AB) 2744 (Stats. 1992, ch. 1337, which is uncoded) in support of independent storage and the Commission's issuance, in 1993, of the *Gas Storage Decision* (D.93-02-013, 1993 Cal. PUC LEXIS 66) and subsequent decisions.

2.2 Overview of the Proposed Project

Wild Goose proposes to develop two additional reservoirs in Butte County to increase working inventory by 15 Bcf (to 29 Bcf) and thereby increase peak injection capacity to 450 MMcf/d and peak withdrawal capacity to 700 MMcf/d.² The proposed expansion would continue to utilize the

² This is Wild Goose's project description, and does not refer to PG&E's ability to transport gas to and from Wild Goose. Whether or not PG&E has sufficient backbone

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interconnection with PG&E's Line 167 but also would interconnect near Delevan in Colusa County with PG&E's Line 400/401, also known as the Redwood Path. The Redwood Path, which runs from Malin to Panoche, is one of the two main physical paths linking PG&E's intrastate transmission system, the "backbone," to the interstate system. (The other is the Baja Path, known as Line 300, from Topock to Milpitas.) Wild Goose proposes to construct, at its own cost, a 25.5 mile, 36-inch bi-directional pipeline through Butte and Colusa Counties to link its storage fields with Line 400/401.

All components of this proposed project are more thoroughly defined in the Environmental Impact Report (EIR). We discuss the project components and the EIR in Section 8 of this decision.

2.3 Procedural Background

Wild Goose filed this application together with its Proponent's Environmental Assessment (PEA) on June 18, 2001. On July 26, by ruling, the assigned Administrative Law Judge (ALJ) set a Prehearing Conference (PHC) for August 8 and required the filing and service of PHC statements beforehand. Various protests and petitions to intervene were addressed at the PHC³ and thereafter, on August 29, the Assigned Commissioner and ALJ⁴ jointly issued the

capacity to serve the proposed expansion was a point of significant contention at evidentiary hearing and is discussed elsewhere in this decision.

³ The Office of Ratepayer Advocates (ORA) filed a protest, as did PG&E, though PG&E titled its pleading "Response in Conditional Support of the Application". The ALJ granted motions to intervene filed by the following persons and entities: Calpine Corporation; Roseville Land Development Corporation (Roseville Land); and Patricia I. Towne.

⁴ This proceeding was initially assigned to ALJ Prestidge and Commissioner Bilas. ALJ Vieth was assigned to the proceeding prior to the commencement of the evidentiary

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Scoping Memo required by Rule 6.3 of the Commission's Rules of Practice and Procedure.⁵

The Commission held eight days of evidentiary hearing in Phase I (the CPCN issues) on November 13-16, November 19-20 and November 27-28, 2001. The Assigned Commissioner did not attend. Briefs on Phase I were filed on January 11 and February 19, 2002. A quorum of the Commission, heard oral argument on February 5.

Meanwhile, Phase II review of environmental issues, including review under the California Environmental Quality Act (CEQA), continued and in March 2002 Commission staff mailed the Draft EIR for public comment. Following the mailing of the Final EIR on June 13, this proceeding was submitted for decision on Phases I and II.

3. Requirements for Certification Under §§ 1001 et seq.

A request for an amendment of an existing CPCN triggers the same kind of review as the request for the original CPCN. Under §§ 1001 et seq. the Commission must review issues such as need, community values and the influence of the proposed project on the environment before granting a CPCN to construct the project at issue. Pub. Resources Code §§ 21000 et seq. (which codifies CEQA) governs environmental review by this Commission and other

hearings and following Commissioner Bilas' resignation from the Commission, the proceeding was reassigned to President Lynch.

⁵ Unless otherwise indicated, all subsequent citations to rules refer to the Commission's Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations and all subsequent citations to sections refer to the Public Utilities Code.

state agencies. Where the Commission is the lead agency for a project, as in this proceeding, it must prepare an environmental document that assesses the project's environmental implications. (See generally *Re Southern California Edison Company*, D.90-09-059, 37 CPUC2d 413, 421.) We review the EIR in Section 8, below, and in this Section consider the other issues raised under §§ 1001 et seq.

3.1 Need

In granting CPCNs for the existing Wild Goose storage project and for Lodi's storage project, the Commission interpreted project need under § 1001 in light of its *Gas Storage Decision* and subsequent decisions. In the Wild Goose and Lodi CPCN decisions the Commission determined that its "let the market decide" policy should apply to competitive gas storage providers and therefore, that it would not test the need for a new gas storage project on a resource planning basis but instead would rely on a presumptive showing of need, established by the builders and users of the new project accepting all of the risk of the unused, new capacity.⁶

The Lodi CPCN decision further explains that the inapplicability of resource planning principles does not mean that a presumptive showing of need will suffice for all purposes. Rather, "a fuller showing of need may be necessary to the extent required by law", for example, to establish conformance with community values and the other criteria listed in § 1002, to show grounds for a finding of overriding consideration with respect to an EIR, or in connection with

⁶ The *Gas Storage Decision* states: "The Commission should entrust noncore storage expansion decisions to market participants. The Commission should not review the need for new storage projects intended to serve noncore customers, as long as all the

Footnote continued on next page

eminent domain under § 625. (D. D.00-05-048, 2000 Cal. PUC LEXIS 394 at *37.)

The Lodi decision goes on to identify, on the record established in that proceeding, several benefits of competitive gas storage including, “(a) increased reliability; (b) increased availability of storage in California; (c) the potential for reduced energy price volatility; and (d) the potential for reduced need for new gas transmission facilities”. (*Id.* at *41.)

At evidentiary hearing in this proceeding, Wild Goose’s witnesses attributed benefits of this nature to the expansion project, within certain parameters, since as proposed, the expansion would add approximately 370 MMcf/d of injection capacity and approximately 500 MMcf/d of withdrawal capacity. As we discuss below in Section 7, the record suggests that PG&E’s backbone transmission system may be unable to accommodate these additional volumes fully at certain peak demand times. Absent localized constraints of this kind, however, the record does not controvert Wild Goose’s testimony that gas storage can exert downward pressure on border price increases attributable to upstream interstate and intrastate transmission constraints (e.g. at Malin and Topock) and likewise, can serve as a substitute for interstate gas during times of high demand. No party disputes that the failure of large customers to inject sufficient gas into storage in California is one factor that contributed to the large price increases for natural gas during the winter of 2000/2001.

Wild Goose witnesses also testified that new electric generation in California and the Pacific Northwest will increase the demand for natural gas and related services beginning in 2002. The record does not provide a solid

risk of unused capacity resides with the builders and users of the new facilities.” (*Gas Storage Decision*, 1993 Cal. PUC LEXIS 66 at *87, Finding of Fact No. 37.)

estimate of that increase, since many determining factors remain unknown or are not specified in the evidence presented (e.g. which plants will be built; when they will begin operations; what existing natural gas capacity, storage capacity or transmission rights they may hold already).

However, the record does demonstrate customer interest in Wild Goose's storage services. According to Wild Goose's witness Amirault, an open season in December 2000 for storage at the existing facility resulted in five new contracts with terms of four to five years, such that the existing facility is fully contracted through March 2005, with some contracts continuing into 2006. A subsequent open season for expansion capacity, held in 2001 from April 11 through May 22, yielded 15 bids for terms from two to 30 years and has resulted in five binding precedent agreements. (The identities of these customers and contract volumes, as well as other contractual terms have been disclosed to the Commission under the confidentiality provisions of § 583 and General Order (GO) 66-C.) Wild Goose is continuing efforts to secure precedent agreements for the full expansion capacity.

Except for Roseville Land, no party directly contests Wild Goose's evidence on need or application of the Commission's "let the market decide policy"—in fact, PG&E affirmatively reiterates its support for imposing the costs of a competitive project on the proponent and customers of that project. Roseville Land's concerns more closely relate to its positions on market-based rates and the validity of Wild Goose's public utility status, which we address in Sections 4 and 5, below. We conclude that Wild Goose has made a sufficient evidentiary showing to satisfy § 1001, as interpreted by Commission precedents applicable to independent gas storage.

3.2 § 1002 Issues

Under § 1002, the Commission must consider the following factors in determining whether or not to grant a CPCN: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values; and (4) influence on the environment. The obligation to consider these factors is independent of the Commission's obligation to conduct a review under CEQA. (See *Re Southern California Edison Company*, D.90-09-059, 37 CPUC2d 413, 453.)

In assessing community values, as the Lodi CPCN decision states, the Commission "give[s] considerable weight to the views of the local community" and to "the positions of the elected representatives of the area" who address a matter on behalf of their constituents. Wild Goose's application includes a letter of support from State Senator Johannessen, resolutions of support from the Boards of Supervisors from Butte and Colusa Counties, and letters of support from several local waterfowl associations whose interests concern wetlands preservation and seasonal hunting. Many of these statements acknowledge Wild Goose for its environmentally sensitive development and management of the existing facility, which is located in wetlands within the Sacramento Valley flood plain.

The only party to challenge these letters and resolutions, Roseville Land, attempts to discredit them, first, as the product of Wild Goose's solicitations and second, because some of the authors (e.g. the waterfowl associations) may have an economic interest in the success of the expansion project. Roseville Land, which is involved with Wild Goose in civil litigation related to Wild Goose's condemnation of property under eminent domain law in

connection with development of the existing facility, is the sole, vocal “community” opponent of the project, and the only, wholly adverse party.⁷ We find Roseville Land’s arguments weak. There has been no showing of fraud with respect to these documents, let alone any intimation of impropriety, and we accept them at face value as public statements by their signatories of support for the expansion project.

No controversy surrounds the second and third elements of § 1002. The project does not fall within local, state, or federal recreation areas in either Butte or Colusa Counties. Should buried prehistoric archaeological sites, or the remains of such sites, be discovered in the course of construction, Wild Goose has committed to continue to comply with the Historic Properties Management Plan which was developed in connection with development of the existing facility as part of a Memorandum of Agreement between Wild Goose, the Corps of Engineers’ Sacramento District, the State Historic Preservation Office, the Federal Advisory Council on Historic Preservation, and the Commission.

The scoping memo consolidates the third element, influence on the environment, with preparation of the EIR under CEQA. We discuss the project’s potential environmental impacts in Section 8.

⁷ At the PHC, another local landowner intervened, Patricia I. Towne, on behalf of the Kevin D. Towne and Patricia I. Towne Revocable Living Trust (the Towne Trust). The Towne Trust, which intervened because the proposed expansion pipeline route passes through trust property, did not participate in this proceeding in any way following the PHC.

4. Authority to Charge Market Based Rates for Expansion Project Service

Finding that as a new entrant without market share Wild Goose will lack market power, the original Wild Goose CPCN decision authorized Wild Goose to offer its storage services at market-based rates. Wild Goose seeks the same rate treatment for the expansion project's storage capacity. ORA supports Wild Goose's request, Roseville Land opposes it, and no other party takes a position on this issue. Essentially, the question before us is whether changes in the market, including the addition of expansion capacity, must change the Commission's previous finding that Wild Goose cannot wield market power.

Wild Goose offers, as Exhibit (Ex.) 9, a market power assessment prepared by MRW and Associates, Inc. This study analyzes the product market in four potential geographic markets, includes both a measure of market concentration, based on the Herfindahl-Hirschman Index (HHI) used by the Federal Energy Regulatory Commission (FERC), and of market share and, examines product substitutes (such as flowing supplies, balancing services and alternative fuels). Ex. 9 defines the product market as two separate storage services: (1) inventory or working gas capacity; and (2) withdrawal capacity. The four geographic markets (from narrowest to broadest) comprise: (1) storage within northern California; (2) all storage in California; (3) storage connected to California throughout the west and Pacific northwest via interstate transmission systems that serve California directly; and (4) storage accessible to California through connections to pipelines that interconnect with the major pipelines serving California. Wild Goose argues that all California is the appropriate geographic market because it is the narrowest geographic area that includes all direct interconnections to the Wild Goose facility via the PG&E and SoCalGas transmission systems. This market also encompasses Wild Goose's present

customer base. Roseville Land contends that the relevant geographic market is northern California, since that is the location of the Wild Goose facility.

In fact, Ex. 9 shows that *both* of these geographic markets are highly concentrated markets for storage services (actually market concentration occurs in three of the four markets examined; only the broadest market definition results in HHIs of less than 1800).⁸ Under all market scenarios, however, the HHI is lower with the expansion project factored in. For example, the HHIs for inventory for the northern California and all California markets, respectively, are 3862 and 4129 without the expansion and 3482 and 3690 with it. The comparative values for withdrawal capacity are 5254 and 4795 without the expansion and 4109 and 4209 with it. Wild Goose attributes the California market concentration primarily to the large storage facilities owned by PG&E and SoCalGas. Roseville Land counters that because PG&E and SoCalGas must dedicate most of their storage facilities to core customers, Wild Goose's assessment elevates the impact of PG&E/SoCalGas storage above its real value. Core storage accounts for approximately 33 Bcf of PG&E's total storage capacity of approximately 41 Bcf. However, it is possible that Wild Goose storage could also serve core customers.

The high market concentrations for the two storage products examined concern us (whether the correct geographic market is northern California or all California), but we recognize that it provides only an incomplete picture of the

⁸ HHI analysis produces results ranging from one to 10,000, where 10,000 indicates the presence of a monopoly or other conditions resulting in a single entity serving the market. FERC considers an HHI below 1,800 to indicate a lack of market concentration; at 1,800 or above, FERC tends to apply closer scrutiny.

possibility for market power to operate and we turn next to the market share evidence in the record. Where FERC has approved market-based rates for storage service, particularly in highly concentrated markets, generally market share has been low. Ex. 9 explains that “[m]arket share matters because ‘*the smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable*’.” (Ex. 9 at 25 [italics in original], quoting the *Horizontal Merger Guidelines* from the U.S. Department of Justice, pp.8-9.)

Ex. 9 shows that Wild Goose’s market share for inventory in the northern California and all California markets, respectively, is 19% and 8% based on current capacity but increases to 32% and 15% with expansion capacity factored in. For withdrawal capacity, Wild Goose’s market share at present is 9% and 3%, respectively, in the northern California and all California markets; post-expansion, Ex. 9 shows Wild Goose’s market share in those same markets increasing to 26% and 10%. When storage expansions that PG&E and SoCalGas have proposed are factored in as well, Wild Goose’s post-expansion market share generally drops slightly. This scenario shows Wild Goose with a market share for inventory of 31% in northern California and 14% in all California; its market share for withdrawal capacity drops to 22% for northern California and remains at 10% for all California. Commenting on these numbers, Wild Goose notes that in a recent proceeding, FERC approved market-based rate authority for a gas storage entity with market shares for storage inventory capacity of 13.5% and for withdrawal capacity of 21.8%. (*ONEOK Gas Storage, Inc.* 90 FERC ¶ 61,283 (2000).)

This record necessarily leads us to conclude not only that the geographic market for gas storage is highly concentrated, but also that, post expansion, Wild

Goose will have a market share higher than the percentages calculated in Ex. 9. Thus, the record leads us to be cautious in determining whether or not Wild Goose possesses market power, and leads us to conclude that its market power and behavior should be carefully monitored.

A further analysis is necessary to determine whether Wild Goose can exercise market power even if it is found to possess it. To provide a fuller picture of the potential for Wild Goose to exercise market power, we must consider the remaining factors that influence that ability, including the existence of alternatives to storage, which affect the elasticity of demand for storage injection and withdrawal. Ex. 9 identifies several potential alternatives including transportation capacity, which in many situations is interchangeable with storage, and balancing services, which permit natural gas shippers to “balance” short-term discrepancies between gas receipts and deliveries without purchasing storage. Other alternatives, such as alternate fuel usage, may exist in some instances, though California’s air quality problems limit the viability of alternative fuels.

Ex. 9 lists several other controls on the potential exercise of market power that we address in turn: Wild Goose does not control transportation services; its affiliates will not give it an advantage; and it operates under a regulated rate structure. The first and second of these appear, on this record, to be the most limiting factors. Wild Goose must rely on its competitors’ transportation services to move gas into and out of the Wild Goose facility. PG&E (and SoCalGas) own the transmission systems to which independent storage providers must interconnect and upon which they or their customers must depend for their storage to function as part of the natural gas system infrastructure. Wild Goose does not hold any transmission capacity itself and its affiliates hold only 38.5

MMcf/d of long-term transportation capacity on Pacific Gas Transmission (PGT).⁹ PGT's total capacity is approximately 2.7 Bcf per day; approximately 1.8 Bcf per day can be delivered to California, though deliveries tend to be lower.

The contention that regulated rates will prevent Wild Goose from exercising market power is less persuasive, since the market rate authority Wild Goose holds gives it substantial flexibility to negotiate rates. The rates PG&E and SoCalGas charge may or may not effectively "cap" Wild Goose's rates, since many factors, such as the demand for storage and availability of transportation access, will influence market realities.

We are unable to determine, on this record, whether or not Wild Goose can exercise market power. Neither can we determine that the potential for Wild Goose to exercise market power is fully mitigated by its lack of control of the transportation system, or by other factors discussed above.

The recent electricity crises in California and the gas price-spikes during the winter of 2000/01 have shown us, first-hand, the great public cost of energy market manipulation. We recognize, moreover, that the natural gas market is highly dynamic and that changes in storage, as well as in other parts of the market, may affect the storage market in critical ways. Given the characteristics of the present gas storage market, we conclude on this record as a whole, that we should condition our approval of the market-based rate authority sought in this

⁹ Several parties, in reply briefs, note the January 27, 2002 announcement that Wild Goose's parent, AEC, has contracted to merge with PanCanadian to form EnCana Corporation. If this transaction goes forward, at some point the merger partners will be required to apply to this Commission for approval of the resulting change in the control of Wild Goose. We will consider the market power ramifications of such a change in control at that time.

application by first revoking the relaxed reporting requirements we approved in prior decisions. More specifically, we should rescind Wild Goose's exemption from GOs 65-A, 77-K, and 104-A and its authority to comply with §587 through filing a simplified report on affiliate activities.¹⁰ While we decline to conclude definitively in this decision whether Wild Goose possesses and can exercise market power, these reporting requirements should allow us to monitor the situation more fully in the future.

To further minimize the potential for exercise of market power, we will also impose another requirement on Wild Goose: we expressly prohibit Wild Goose from engaging in any storage or hub services transactions with its parent company or any other affiliate owned or controlled by its parent company. Both short-term and long-term transactions are covered by this prohibition. This prohibition was offered by Wild Goose in its comments on the proposed

¹⁰ D.00-12-030 exempts Wild Goose from GOs 65-A, 77-K, and 104-A and authorizes a simplified annual report as compliance with §587. (D.00-12-030, slip op.) These provisions concern the following:

- GO 65-A: requires submission of "each financial statement prepared in the normal course of business" by a utility with annual operating revenues of at least \$200,000 and the "annual report and other financial statements issued to its stockholders".
- GO 77-K: requires submission of data on the compensation of officers and employees, dues and donations, and legal fees.
- GO 104-A: requires the filing of what is usually meant as an "annual report."
- § 587 concerns reports on transactions with affiliates as implemented by D.93-02-019 (adopting the Interim Affiliate Reporting Requirements), and most recently, D.99-05-011 (confirming the continued application of the 1993 rules).

decision. We accept it, but do not intend for this rule to be precedential for other independent storage operators.

We also commit to reopening consideration of changes to our 1997 Affiliates Transactions Rules in R.01-01-001 (currently stayed and to which Wild Goose is already a respondent), as those rules pertain to independent storage operators. We encourage Wild Goose to help develop the record in that proceeding. We will consider modifying or removing the prohibition on affiliate transactions by Wild Goose after our reconsideration of the Affiliate Transactions Rules is complete.

The reporting requirements and rules identified above generally govern interactions between a utility (such as Wild Goose) and its affiliates, particularly affiliates with business in unregulated sectors of the energy market. We are concerned that the reporting requirements may be insufficient to allow us to adequately monitor market behavior and market structure on a continuing basis so that we can promptly remedy market power abuses by revoking market-based rates or taking other remedial action.

Therefore, as a final condition of the authorization of market-based rate authority for the expansion project, we should direct Wild Goose to promptly inform the Commission of the following changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing: Wild Goose's own purchase of other natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent, Alberta Energy or a successor; or merger or other acquisition involving affiliates of Alberta Energy or

a successor and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation.

We should also require Wild Goose to provide the Commission with service agreements for short-term transactions (one year or less) within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales. If Wild Goose enters into multiple service agreements within a 30-day period, Wild Goose may file these service agreements together so as to conserve the resources both of Wild Goose and the Commission. The quarterly transactions summaries should list, for all tariffed services, the purchaser, the transaction period, the type of service (e.g. firm, interruptible, balancing, etc.), the rate, the applicable volume, whether there is an affiliate relationship between Wild Goose and the customer, and the total charge to the customer. For long-term transactions (longer than one year), Wild Goose should submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service. To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's records, long-term transaction service agreements should not be filed together with short-term transaction summaries.

All reports required by the preceding paragraphs should be provided to the Director of the Commission's Energy Division within 60 days of the effective date of this decision on an initial basis and thereafter, as specified above or by the applicable rule, General Order, or statute. The reports, or portions of them, as applicable, may be submitted under the confidentiality and nondisclosure protection afforded competitive and commercially sensitive information under GO 66-C and § 583. With these conditions, we will approve the expansion project, and approve Wild Goose's request to continue to charge market-based

rates. Our approval of market-based rates is subject to re-examination if significant change occurs in Wild Goose's market power status.

5. Wild Goose's Status as a Public Utility for Purposes of Eminent Domain

The June 1997 CPCN decision bestows public utility status upon Wild Goose. (D.97-06-091, 73 CPUC2d 90 at Finding of Fact 11, Conclusion of Law 11, Ordering Paragraph 1.) Since Wild Goose is a Delaware corporation, in 1996 it obtained authorization from the California Secretary of State to transact intrastate business in California in conformance with the law of this state, as § 704 requires. Wild Goose's Certificate of Status, Foreign Corporation, executed on September 10, 1996, is Appendix A to its application.

Following the CPCN grant, Wild Goose exercised its right of eminent domain to condemn certain real property in connection with the construction and operation of its existing natural gas storage field. The record reflects that this condemnation has been the source of extensive litigation between Roseville Land and Wild Goose in the civil courts. Roseville Land did participate in the evidentiary hearings that led to the CPCN decision; at the PHC in this proceeding, Roseville Land also raised concerns about Wild Goose's status as a public utility and the associated condemnation authority. The scoping memo includes these issues within the CPCN phase (Phase I).

Roseville Land's primary contention is that Wild Goose cannot be a public utility because it is not a gas corporation operating a gas plant to store gas "for light, heat, or power" as defined in § 221. Roseville Land relies on Wild Goose's admission that it does not ask its customers what they use gas for. This contention suggests a lack of familiarity with how the natural gas system network operates on the one hand, and on the other, with Commission precedent

interpreting the relevant provisions of the Public Utilities Code and the common law doctrine that a public utility must dedicate its facilities to public use.

The Wild Goose facility is interconnected with PG&E's intrastate transmission and distribution systems and through that transportation network, with the transmission and distribution systems of SoCalGas, as well as the interstate systems that interconnect with them both. In unbundling the gas storage systems of the incumbent monopoly utilities via the *Gas Storage Decision* and subsequent decisions, the Commission sought to remove imbedded cross-subsidies, thereby removing barriers to entry for new storage providers. Wild Goose's storage, whether provided to noncore customers or core aggregators, is the functional equivalent of storage owned by PG&E or by SoCalGas. The underground storage reservoir and associated pipelines, compressors, and equipment owned and operated by Wild Goose represent "gas plant" under § 221. Wild Goose is a "gas corporation" owing and operating such gas plant for compensation, consistent with § 222.

Roseville Land also argues that Wild Goose cannot be a public utility because by offering service at market-based rates it necessarily fails to comply with those provisions of the Public Utilities Code that mandate fair, nondiscriminatory rates (e.g. § 454) set out in filed tariffs (e.g. § 489). In other words, Roseville Land asserts that Wild Goose violates such statutes because it may decline to serve customers who choose not to accept the market price offered and because it may negotiate different rates (or other terms or conditions) with different customers. Roseville Land misunderstands the application of these statutes to the noncore gas storage market, as interpreted by the Commission. We affirm that Wild Goose, as a public utility, may exercise the public utility right of eminent domain, as provided in the Public Utilities Code

and consistent with the Code of Civil Procedure. This right necessarily will extend to the expansion project, if we amend Wild Goose's CPCN as requested in this application.

6. Interconnection Issues

6.1 Scope of the Required Interconnection Facilities

As proposed, the expansion project will interconnect with PG&E's Line 400/401, the Redwood Path, near the Delevan Compressor Station. Wild Goose will bear all costs for construction and installation of the 25.5 mile pipeline from the storage field to Line 400/401. The record does not yet contain a list of the specific facilities necessary to accomplish the interconnection near Delevan, and Wild Goose states in its opening brief that this matter is still under review with PG&E.

Wild Goose seeks assurance that it will be permitted to participate in the design and construction of the interconnection facilities, since it brings considerable experience to such undertakings, as does its parent, Alberta Energy. Wild Goose notes that PG&E has no tariffs that directly address transmission level interconnections between utilities and tends to refer, by analogy, to PG&E Rule 15 (Gas Main Extensions) and Rule 16 (Gas Service Extensions). Both rules include provisions that permit "applicant installation options". We recognize that Wild Goose has expertise, and access to expertise, in natural gas system design and development. We direct PG&E to allow Wild Goose to participate in developing the details of the interconnection. Based on the record before us, we have no reason to prohibit Wild Goose from undertaking the construction or portions of it. Our primary concerns in this matter remain the safe and reliable

operation of the interconnected natural gas system throughout the construction period, however, not the economic advantage of one party relative to another.

6.2 Allocation of Costs for Interconnection Facilities

The *Gas Storage Decision* addresses cost responsibility associated with interconnecting third-party storage providers as follows:

Utilities should interconnect with independent storage providers as if the latter were consumers of gas. Thus standard interconnection costs will be recovered on a rolled-in basis. Special facilities costs will be charged to the storage provider. (1993 Cal. PUC LEXIS 66 at *46.)

This principle, reiterated in the decisions granting CPCNs to Wild Goose and to Lodi, is the basis for Rules 2.1 and 2.3 of the Commission's Adopted Rules for Gas Storage Service (Gas Storage Rules):

2.1 A utility must interconnect its transmission facilities with an independent storage facility that requests such interconnection, unless the utility can make a clear showing that such interconnection will impair its ability to serve existing utility customers. *Interconnection obligations shall not differ from obligation to serve gas transportation customers having similar loads.*

....

2.3 *The utility shall be responsible for the cost of standard interconnection facilities required, installed, and paid by the utility for transportation customers having similar loads.* Responsibility for special facilities in excess of standard interconnection facilities will be assigned by agreement of the Parties or will be submitted to the Commission for resolution. Utility ratepayers shall not be responsible for costs of special facilities. The utility shall not delay installation of interconnection facilities pending resolution of any dispute regarding cost responsibility. (*Id.* at *103, emphasis added.)

With respect to what kinds of facilities should be deemed standard or special, the *Gas Storage Decision* states “PG&E’s Rule 2 is a reasonable model...”. (*Id.* at *46.) PG&E’s Rule 2 (Description of Service) includes a general description of special facilities at part 2.C.

We have not been asked previously to distinguish between standard and special facilities for gas storage interconnections, or to address cost allocation, since the two gas storage CPCN decisions the Commission has issued approve agreements between the respective storage providers and PG&E regarding these matters.¹¹ Each CPCN decision expressly limits cost allocation approval to the agreement under review. This limitation is consistent with the Commission’s Rules of Practice and Procedure, which include the provision that Commission adoption of a stipulation or settlement shall not serve as precedent in future proceedings “[u]nless the Commission expressly provides otherwise...”. (Rule 51.8)

No agreement has been reached in this proceeding. In Wild Goose’s view, Gas Storage Rule 2.3 is clear and requires that PG&E (through its ratepayers) absorb the cost of those standard facilities that would be necessary to interconnect a transportation customer with a comparable load, e.g. a customer with gas usage equal to the injection capabilities of the expanded facility (450 MMcf/d) and with delivery service at existing pressures ranging between 800 – 1200 pounds per square inch (psig) at the Delevan interconnect. Wild Goose

¹¹ In the prior Wild Goose proceeding, cost allocation was based on the parties’ identification of the necessary facilities as standard or special in accordance with PG&E’s Rule 2. In the Lodi proceeding, Lodi agreed to pay for all interconnection costs. Lodi’s witness Dill testified in this proceeding that Lodi entered into that agreement “rather than suffer the costs and potential delay of litigation [with PG&E]”. (Ex. 200A.)

concedes that it should pay for any special facilities. Lodi agrees with Wild Goose.

PG&E, on the other hand, advances two alternative arguments for imposing all interconnection costs on Wild Goose. ORA agrees with PG&E. First, relying upon application and interpretation of its Gas Rule 2 (Description of Service) and Gas Rule 16 (Gas Service Extensions), PG&E argues that only special facilities are at issue. As noted above, the *Gas Storage Decision* requires use of PG&E's Gas Rule 2 as a "model" for identification of standard and special facilities. PG&E's Gas Rule 2.C.2 provides, in relevant part:

Special facilities are (a) facilities requested by an applicant, which are in addition to or in substitution for standard facilities which PG&E would normally provide for delivery of service at one point, through one meter... (PG&E Gas Rule 2.C.2., emphasis added)

According to PG&E, since the existing Wild Goose facility already interconnects with PG&E at Line 167, the proposed Line 400/401 interconnection at Delevan will provide for injection and withdrawal from a second point, through another meter or meters and thus, the facilities required to make that interconnection are special facilities. PG&E argues that its Gas Rule 16 reinforces this assessment, because that rule generally limits PG&E's obligation to provision of "one Service Extension ... for a single enterprise on a single Premises...." (PG&E Gas Rule 16.C.2.)

We agree that the proposed Line 400/401 interconnect will be a second service connection for the Wild Goose facility, and thus, its components constitute special facilities for which Wild Goose should pay. The expansion project increases the operating capacity of Wild Goose's existing facility in Butte County. The new pipeline connecting that expanded facility to Line 400/401 will provide an additional interconnection with PG&E's system. We rely solely upon

the model provided by PG&E's Gas Rule 2 in reaching this result. We decline to comment, on this record, on whether PG&E's Gas Rule 16 might provide a useful analogy for other aspects of service expansion as it relates to transmission level interconnections of gas storage providers.

Having determined that the Line 400/401 interconnection facilities are special facilities, we briefly address PG&E's alternative argument, which we reject. PG&E postulates that if standard facilities are indeed at issue, they are subject, by analogy, to the Commission's 1997 decision modifying the distribution line extension rules. (See *Rulemaking to Consider Line Extension Rules of Electric and Gas Utilities*, D.97-12-098, 1997 Cal. PUC. LEXIS 1107; mod. D.98-03-039, 1998 Cal. PUC. LEXIS 56.) PG&E argues that the line extension modifications not only have amended PG&E's Gas Rule 15 (Gas Main Extensions), which governs extensions to distribution mains, but also effectively have revised the Commission's Gas Storage Rule 2.3, *supra*. Under PG&E's Gas Rule 15, the cost of standard interconnection facilities for main extensions is determined by offsetting the cost of those facilities by a revenue-based allowance tied to distribution revenue or monthly customer charge. PG&E contends that because Wild Goose has a zero offset under the Gas Rule 15 formula, it must pay the full cost of standard facilities.

We defer to some other, more appropriate proceeding the issue of whether the principles governing interconnection of new distribution main extensions might provide a useful analogy for the transmission level interconnections of gas storage providers and confine ourselves to pointing out the clear defect in PG&E's argument. The 1997 line extension decision does not even mention, let alone discuss, independent storage providers, the Gas Storage

Rules or the Wild Goose CPCN decision. We find no legal basis for the argument that the 1997 line extension decision modified Gas Storage Rule 2.3.

Since we conclude that the interconnection facilities are special facilities, and that Wild Goose must bear all costs, we do not need to order further proceedings on this issue. However, Wild Goose should provide the Director of the Commission's Energy Division with a list of interconnection facilities once they have been determined and serve that list on the service list for this proceeding.

6.3 Operating and Balancing Agreement

ORA asks that we direct Wild Goose and PG&E to enter into an operating and balancing agreement for the expansion operations. No party contests this request and we required these agreements when we approved the Wild Goose and the Lodi CPCNs. We agree that an operating and balancing agreement should govern the expansion project. Wild Goose and PG&E may determine whether to draft a new, separate agreement or to amend the one that governs the existing facility's operations. This operating and balancing agreement must be in place before the expansion project commences operations. Wild Goose should provide the Director of the Commission's Energy Division with a copy of the agreement and serve it on the service list for this proceeding.

7. Backbone Transmission Service Issues

7.1 What Level of Transmission Service Will Be Available on the PG&E Backbone Upon Interconnection of the Wild Goose Expansion?

The expansion will increase the Wild Goose facility's injection capacity by approximately 370 MMcf/d and its withdrawal capacity by approximately 500 MMcf/d. The facility's present capacity (injection, 80 MMcf/d and

withdrawal, 200 MMcf/d) moves through PG&E's Line 167 and has no direct interconnection with Line 400/401, the Redwood Path. Wild Goose states it intends to continue to use Line 167 for those volumes and so, for the purposes of this proceeding, our inquiry is whether PG&E will be able to provide the transmission service on the Redwood Path necessary to move anticipated expansion volumes or whether peak day constraints are likely.¹² Unless a customer holds firm capacity rights on the Redwood Path, the customer's gas will move both to and from the Wild Goose or Lodi storage facilities, under "as-available" or "interruptible" transportation, which is less reliable than firm, but also less expensive.

The evidence on the amount of backbone capacity available to serve the Wild Goose expansion presents a moving target, largely because it requires so many assumptions about system operations as well as about future demand for natural gas and, consequently for transportation, both within California and beyond the state borders. PG&E performed an initial expansion capacity study for Wild Goose in May 2000 (Ex. 127) and after announcing its intention to expand the Redwood Path, provided an update in November 2001 (Ex. 128), during evidentiary hearings. Neither study factors in demand from the Lodi facility, which holds a certificate for inventory of 12 Bcf of working gas with maximum injection capacity of 400 MMcf/d and maximum withdrawal capacity of 500 MMcf/d. (D. 00-05-048, 2000 Cal. PUC LEXIS 394 *16.)

¹² Wild Goose seeks an interconnect at Delevan designed for 700 MMcf/d, according to its witness Amirault, "... so that in abnormal situation, if the circumstances on Line 167 should dictate, and additional capacity on the backbone allows, all 700 MMcf/d could be accommodated [on the backbone]." (Ex. 10.)

PG&E's initial study suggests the backbone can accommodate the additional Wild Goose injections most of the time (i.e. up to 450 MMcf/d except in winter, when system minimum pressures would permit injections of no more than 350 MMcf/d). Withdrawals present a problem, however; the initial study estimates the backbone can accommodate withdrawals of only 100-150 MMcf/d. Running the electric-driven compressors at PG&E's Bethany compressor station (located on Line 400/401 near the San Francisco bay area load center) more frequently than they operate at present can increase withdrawal capacity to 200-250 MMcf/d.

The update, which includes 200 MMcf/d additional capacity on the Redwood Path, indicates that given average conditions and without the Bethany compressors operating, the backbone can accommodate storage withdrawals of approximately 80 MMcf/d in January and 180 MMcf/d in August (historically, the months for peak day winter and summer capacity demand). With Bethany running, the January and August withdrawal volumes increase, respectively, to 300 MMcf/d and 290 MMcf/d.

ORA and Wild Goose point to a number of uncertainties that may make PG&E's estimates conservative. These include, among other things, the amount of as-available capacity on the Redwood Path if under-deliveries occur at Malin because gas is shipped elsewhere (as has occurred during the past several years) and the amount of additional as-available capacity after expansion of the Redwood Path. Data from the past three winter periods shows unused capacity, on a monthly average basis, in the following amounts: 380 MMcf/d in 1998/99; 245 MMcf/d in 1999/00; and 196 MMcf/d in 2000/01. Wild Goose's much more optimistic synthesis of the evidence (Appendix A to its opening brief) suggests

that the backbone may be able to handle storage withdrawals in January of up to 897 MMcf/d and in August, of up to 551 MMcf/d.

In summary, no party argues that there will be insufficient capacity for storage injections—withdrawals present the potential problem area. While the precise amount of backbone capacity available for storage withdrawals is uncertain, the record suggests that during periods of peak demand the backbone may be unable to accommodate full as-available withdrawals from both the Wild Goose facility and the Lodi facility, in addition to other firm and as-available demand on the system. The following section discusses how scarce capacity should be allocated at times of peak demand, should allocation become necessary.

7.2 Transportation Service for Gas Storage Withdrawals

As long as no capacity constraints exist, PG&E pledges to deliver withdrawals from the expanded Wild Goose facility and from the Lodi facility in accordance with the zero toll terms of as-available capacity on the Mission Path, just as PG&E does at present, consistent with Gas Storage Rules 3.1, 3.2, 4.1 and 4.3.¹³ The parties disagree how to interpret the Gas Storage Rules if capacity

¹³ Unlike the Redwood or Baja paths, PG&E's Mission path is not a physical backbone transmission line but a "contractual" path used to account for deliveries from storage, including PG&E's McDonald Island storage, to a load center destination on PG&E's system (referred to as the "city gate"), irrespective of the actual pipes used to deliver the gas. The Mission path toll is zero cents per decatherm.

The toll on injection into the Wild Goose or Lodi storage facilities depends upon the transmission path and the level of service (firm or as-available) that the transportation customer has obtained from PG&E.

constraints on the backbone prevent full withdrawals. The question of how to allocate as-available transmission service among all transportation customers (including customers of independent gas storage) during times of peak demand is one of first impression for this Commission.

The relevant Gas Storage Rules provide:

3.1 The utility shall provide *open and nondiscriminatory access* by customers of any independent storage provider to utility facilities necessary to transport gas *to and from the independent storage facility*.

3.2 The *terms and conditions applicable to customers of an independent storage provider* regarding access and transportation service over utility facilities-- including priority, scheduling, balancing, curtailment, designation of receipt and delivery points, billing, and any other term or condition of service -- *shall be the same as the terms and conditions applicable to utility transportation customers having similar loads*.

....

4.1 The utilities must modify their tariffs as necessary such that *customer-owned gas transported to and from a storage facility -- whether operated by the utility or an independent provider -- is assessed no more than one transportation charge on each utility system performing the transportation service*. Transportation charges for gas delivered into storage facilities shall be imposed upon delivery into storage. Transportation charges for gas withdrawn from storage and delivered to customer premises shall be imposed upon delivery to the customer premises. *If the second delivery is made by the utility that performed the first delivery into storage, the utility must credit or reverse the transportation charges for the first customer of record, without interest*. If the transporting utility and the customer of record do not change for the second delivery, the second billing transaction is not required.

....

4.3 The utility must not assess any additional transportation fee or charge, or impose any restriction or condition, because transportation service is provided for a customer of an independent storage provider.

This rule does not limit Commission action on incremental vs. rolled-in pricing of transportation service. (1993 Cal. PUC LEXIS 66 at *105, emphasis added.)

The Commission adopted these rules in the *Gas Storage Decision* to remove barriers to storage competition and ensure that independent gas storage providers and their customers were treated no differently than the other gas transportation customers of PG&E and SoCalGas. PG&E charges “postage stamp” rates for each of its path specified backbone transmission lines, such as the Redwood Path, which means a shipper on the PG&E system pays a single, fixed transportation rate to deliver gas to a final, end use destination anywhere on the PG&E system. Under Gas Storage Rule 4.1, if a customer delivers gas into independent storage on the PG&E system, that delivery does not constitute the final, end use destination. In other words, delivery into storage constitutes just part of the full transportation transaction. Therefore, the postage stamp rate paid when gas is transported for injection into storage covers transportation upon withdrawal from storage, throughout the PG&E system, anywhere on the Redwood Path.

However, with the prospect of insufficient as-available transportation capacity during peak demand periods to meet all requests for as-available transportation from Wild Goose and Lodi storage customers, as well as from other transportation customers, the parties strongly disagree about how these Gas Storage Rules should be interpreted. Wild Goose essentially argues that storage customers should have first priority for any as-available transportation over “new” as-available customers, with those who injected into storage earliest

entitled to withdraw first. Lodi argues for pro rata allocation of as-available transportation, not just among independent storage customers but also among all customers vying for the same, limited, as available capacity. While ORA agrees that storage customers should pay a single transportation charge for injection and withdrawal, it does not support as-available priority for storage customers; however, ORA does not explain whether that means it shares Lodi's view.

At the other end of this spectrum, PG&E argues that independent storage customers should be allocated that amount of as-available capacity that remains after other customers for as-available transportation have been served; in other words, storage withdrawals should be last in the as-available transportation queue. According to PG&E, Gas Storage Rules 4.1 and 4.3 should no longer apply to storage withdrawals that must travel on the backbone system. PG&E, with support from TURN, argues that location matters, and hence, any independent storage facility that cannot directly serve a load center should not be covered by these Gas Storage Rules, though TURN suggests this issue should be examined more fully in a generic proceeding convened to review the need to amend the Gas Storage Rules. The record is replete with conflicting arguments over whether SoCalGas' primary storage reservoirs do or do not share the load center attributes of PG&E's own McDonald Island, as well as conflicting arguments about whether Lodi or Wild Goose, or both of them, should be considered load center storage.

The result that PG&E and TURN support would require us to amend the Gas Storage Rules, since that result provides independent storage withdrawals with a "lower" priority than other as-available transportation customers. We have insufficient information on this record to determine whether that result would be good public policy; likewise, too few of those who

would be affected are represented in this proceeding. On the other hand, Wild Goose's proposal provides independent storage customers with a higher priority than other as-available customers, an advantage that we do not read the Gas Storage Rules to contemplate. We find that Lodi's evenhanded proposal provides the most competitively neutral approach. Therefore, on the record developed in this proceeding, we affirm the Gas Storage Rules in their present form and hold that they require a pro rata allocation of as-available Redwood transportation capacity among all potential subscribers, whether they seek to transport flowing supplies or gas previously injected into storage at the Wild Goose or Lodi facilities. The same pro-ration should apply to allocation of Mission path capacity. We direct PG&E to submit by advice letter, within 45 days of the effective date of this decision, proposed tariffs or amendments to existing tariffs, as appropriate, that address pro ration of as-available capacity among all customers during times when insufficient as-available capacity exists to serve all requests for it.

The tariff proposal should comply with the following principles found in the Gas Accord or underlying the current, standard operating procedures on PG&E's system:

- Pro-rationing should compare the as-available transportation nominations on the backbone system from independent storage customers to the total non-storage as-available transportation nominations (i.e. deliveries to local transmission should not be factored in as they do not affect constraints on the backbone);
- Pro-rationing should occur at each nomination cycle during the day based on the backbone system capacity available at that time;

- The non-bumping rule (PG&E's Gas Rule 21.B.3) should be honored;
- Pro-rationing between storage withdrawals and other as-available transportation capacity should be based on the volumes nominated, not on the price bid for that capacity (since, for example, storage may have been injected many months beforehand at a different price than the current market price).

7.3 Brief Overview: Backbone Expansion and Alternatives

The Scoping Memo relegates to Phase III of this proceeding or to some other, appropriate proceeding, resolution of the following issues: (1) whether PG&E should be required to expand its backbone transmission system to accommodate additional storage capacity, and (2) how the costs of a backbone expansion should be allocated. Yet because the Scoping Memo creates some overlap between the CPCN issues (Phase I) and the deferred issues, the ALJ permitted parties to address this overlap generally, if they saw fit to do so, to provide a broader context for their Phase I positions. We briefly summarize this portion of the record.

A central element of Wild Goose's position is its call for the Commission to adopt a so-called "equivalent service" standard by which PG&E would be obliged to design its backbone system to accommodate maximum withdrawals from all, interconnected storage facilities during times of peak demand (to the extent cost/benefit analysis supports that result) and to operate its system to maximize the efficiency of the natural gas transmission, storage and distribution components. Wild Goose argues that the Commission must embrace the concept of equivalent service to enforce the nondiscrimination tenets of the Gas Storage Rules, if independent gas storage is to continue as a viable

alternative to other customer options, such as utility storage and flowing gas supplies. At the present time, Wild Goose argues, prospective storage customers have no “gauge” against which they can assess what level of transportation service they will receive from PG&E, which makes weighing alternatives very difficult. Wild Goose proposes several approaches for implementing this “equivalent service” standard, such as increasing compression on Line 400/401 downstream of Delevan at an estimated cost of \$37.5 million, requiring that PG&E increase its use of the Bethany compressor station if that will avoid peak day constraints, and exploring the use of hub-to-hub services to maximize gas deliveries through operational exchanges on the system wherever needed.

PG&E opposes any solution other than physical expansion of the backbone paid for by Wild Goose or other independent storage providers, arguing that it seeks to protect core ratepayers from non-core cost burdens. ORA and TURN reiterate their positions that we cannot make findings regarding the proposed “equivalent service” standard without considering, in much greater detail than this record provides, both the need for backbone expansion and the cost allocation of such an expansion.

We agree with TURN and ORA that the complexity of these issues requires a focused but more generic inquiry than that presented by the proposed expansion of a single, independent storage provider. We also perceive, based on the evidence in this proceeding, that these issues may not be ripe for further review at present. We do not think that this proceeding is the appropriate forum for considering these issues in greater detail and will not order a Phase III. Neither will we open a new proceeding at this time. However, we will not foreclose any party from raising gas transmission priority issues, other system operations issues, and backbone expansion issues, by motion in any suitable,

pending, generic gas proceeding. We will continue to monitor developments in the California natural gas market closely. At such time as we do reexamine the potential for transmission capacity constraints, we will want to review all reasonable, economic options, including operational alternatives to physical expansion of existing gas plant.

8. Review Under CEQA

CEQA requires the Commission, as the designated lead agency, to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. The Commission uses the PEA, required by Rule 17.1, to focus on environmental impacts and to prepare an initial study to determine whether the project will need a Negative Declaration or an EIR.

In compliance with CEQA, staff of the Environmental Projects Unit of the Commission's Energy Division (staff), commenced review of Wild Goose's application/PEA. Based on this review, which we describe in the following subsection, staff have prepared an EIR, entitled "Environmental Impact Report for the Wild Goose Storage, Inc. Expansion Project", which describes the project, discusses its potential environmental effects and considers alternatives to the project. MHA Environmental Consulting, Inc., under contract to the Commission, assisted staff in the EIR's preparation. The EIR consists of two separate documents, the Draft EIR (DEIR) and the Final EIR (FEIR), which cumulatively make up the EIR. We generally refer to the cumulative documents as the EIR, unless referring to a particular section or discussion, in which case we specifically reference either the DEIR or FEIR. These documents have been identified for the record, respectively, as Reference Exhibit (Ref. Ex.) B and Ref. Ex. C.

8.1 EIR Preparation Process and Public Review

On December 21, 2001, staff mailed a Notice of Preparation (NOP) for the EIR to local, state, and federal agencies and to the State Clearinghouse for a 30-day period for review and comment, as required by CEQA. The NOP provided a general description of the proposed project and a summary of the main regulations and permit conditions applicable to its development and operation.

To gather information related to the possible environmental effects of this application, the Commission also consulted with other affected agencies and jurisdictions. The Commission conducted a Public Agency Outreach Program to establish early contact and open lines of communication with key public agencies that would be directly affected by the proposed project. In the course of consultations with more than 25 public agencies, local agency representatives provided the staff with background information and information about permitting requirements, land use, community perceptions and local environmental concerns. The agency comments helped to determine relevant environmental issues associated with the project.

In addition, the Commission conducted two public scoping meetings on January 8, 2002 in Colusa and Gridley, locations chosen for their convenience to the proposed Wild Goose expansion site and rights-of-way. The meetings were held to explain the environmental review process and to receive public comment on the scope of the EIR.

In compliance with CEQA, in April 2002, staff prepared a Notice announcing the completion of the DEIR and the date, time and location of a public meeting to discuss the proposed Wild Goose expansion project and take comment on the DEIR. The Notice was mailed to city and county planning

agencies and to landowners affected by the project and was printed in local newspapers. Staff also posted the DEIR on the Commission's website and submitted copies of the DEIR to the Governor's Office of Planning and Research for circulation to affected state agencies for review and comment. The public comment period closed on April 22, 2002.

Staff received written comments from the following federal, state and local agencies and others:

- ◆ United States Department of the Interior, Fish and Wildlife Service, Sacramento Fish and Wildlife Office
- ◆ California Department of Conservation, Division of Oil, Gas and Geothermal Resources
- ◆ California Department of Water Resources, Reclamation Board
- ◆ Board of Supervisors, Butte County
- ◆ Butte County Air Quality Management District
- ◆ The Honorable K. Maurice Johannessen, Senator, California State Senate
- ◆ Lodi Gas Storage, LLC
- ◆ Wild Goose Storage Inc.

Staff have reviewed these comments and included written responses in the FEIR which was issued on June 13, 2002 and posted on the Commission's website. Several areas of textual discussion, as well as identified draft mitigation measures, have been amended as appropriate to respond to specific concerns. Because of the volume of the EIR, the entirety of this document is not appended to this decision, but Chapter 4 of the FEIR, the "Mitigation, Monitoring and Reporting Program", is included as Attachment B.

8.2 The Proposed Project and Project Alternatives

The “proposed project” identified in the EIR is the project formally presented in Wild Goose’s application and PEA and includes the PEA’s proposed mitigation measures. The project consists of four primary components: expansion of the existing Well Pad Site to allow the drilling of up to 16 new wells for injection, withdrawal and observation; construction in the existing right-of-way of a second 18-inch diameter bi-directional Storage Loop Pipeline and fiber optic cable to move gas from the reservoir to the Remote Facility; expansion of the existing Remote Facility Site, which is the operational base, or hub, for the Wild Goose storage facility; and construction of the Line 400/401 Connection Pipeline and the Delevan Interconnect Facility, to enable the proposed interconnection with PG&E’s Line 400/401. For purposes of evaluating the project under CEQA, the EIR assumes that Wild Goose will meet all the construction specifications and will complete all mitigation measures.

CEQA requires that an EIR describe a range of reasonable alternatives to the project that would feasibly attain the basic project objectives, as well as a no-project alternative. Since the Well Pad Site, the Remote Facility Site and the interconnection with Line 400/401 have fixed locations, the principle project alternatives concern two alternative alignments of the new pipeline linking the Butte County facility with Line 400/401. The names of the potential project routes refer, comparatively, to where they cross the Sacramento River. The proposed route is known as the Central Crossing and the two alternatives, as the Northern Crossing and the Southern Crossing. The Northern Crossing, which is aligned in roadways or within or just outside road rights-of-ways to a greater degree than the other routes and therefore, is the longest route, actually runs

coincidentally with the Central Crossing in some places and with the Southern Crossing at others.

While the Northern Crossing would minimize potential impacts to agricultural land uses and garter snake habit (rice fields), it passes closer to a greater number of residences than the other routes. Its negative aspects include greater potential impacts associated with aesthetics, noise, and potential hazards to residences in the vicinity of the pipeline, as well as potentially significant impacts to traffic and circulation in the area attributable to construction activities along existing roadways. The distance across the river is about the same for the Northern Crossing and the Central Crossing (approximately 2,400 feet) and their potential impacts upon wetlands would be similar.

The Southern Crossing would affect fewer acres of orchards than the Central Crossing but would affect greater rice field acreages than either the Northern or Central Crossing, thereby increasing the potential impact on garter snake habitat. Because this route has the longest river crossing (approximately 3,700 feet), it would result in greater potential impacts on geology and water quality.

Our discussion, above, briefly summarizes the EIR's lengthy analysis of these three potential routes. The EIR determines, on balance, that the Central Crossing is the preferred route because it minimizes impacts to wetlands and minimizes potential impacts associated with hazards, noise and aesthetics in the area by avoiding residential land uses.

8.3 Environmental Impacts and Mitigation Measures

Each environmental issue in the EIR is analyzed based on significance criteria suggested in the CEQA Guidelines.¹⁴ When the Guidelines do not suggest specific significance criteria, the EIR employs professional judgment to develop reasonable significance thresholds. Potential impacts of the expansion project, including the Line 400/401 Connection Pipeline, are categorized as (1) significant and unavoidable; (2) significant, but able to be mitigated to a less than significant level; or (3) less than significant. When the analysis presented in the EIR shows that no impact will occur as a result of the project, that impact is generally not discussed further. When the EIR determines that the proposed project could potentially cause significant environmental impacts, the EIR identifies feasible mitigation measures to reduce those impacts to less than significant levels, if possible.

For purposes of evaluating the project under CEQA, the EIR assumes Wild Goose will meet all the construction specifications and will complete all mitigation measures required. In addition, the EIR assumes that if Wild Goose makes any changes in the proposed route or other project components, it will apply to the Commission for approval of a variance. In other words, the EIR is based on the assumption that Wild Goose will construct and operate its facilities within the parameters of all required approvals and permits; construction and

¹⁴ The EIR addresses the potential for environmental impacts in each of the following areas: aesthetics; agriculture; air quality; biological resources; cultural resources; geology, soils and mineral resources; hazards and hazardous materials; hydrology; land use and planning; noise; population and housing; public services and socio-economics; recreation; transportation and traffic; and utilities and service systems. It also examines cumulative and growth-inducing impacts, as CEQA requires.

operation in excess of permitted levels will require new discretionary permits and additional environmental review.

The EIR determines that utilizing the proposed route, all significant environmental impacts of the expansion project can be mitigated to a less than significant level except one, the permanent loss of 5.8 acres of prime farmland (and possibly somewhat more) to non-agricultural uses, which is unavoidable. The temporary removal of farmland from agricultural production during construction can be partially mitigated by paying compensation to farmers for crop loss.

The Mitigation, Monitoring and Reporting Program (Attachment B), prepared in compliance with Pub. Res. Code § 21081.6, summarizes the role and responsibilities for the Commission and the process that Wild Goose must follow to ensure effective implementation of mitigation for potential adverse effects and cumulatively considered effects. In response to Wild Goose's comments, we have revised, slightly, three identified Mitigation Measures (Measures 3.2-5, 3.4-3 and 3.14-1) to ensure that the description of each measure in the Mitigation, Monitoring and Reporting Program follows the fuller discussion in the body of the EIR and we have deleted one, duplicative measure (Measure 3.3-6). The revised Measures appear in a new attachments to this decision entitled Errata for WGSJ Expansion Project FEIR MMRP (Attachment C).

When an EIR concludes that a project will still have a significant impact on the environment even after all reasonable mitigation measures are applied, a CPCN can only issue if it is accompanied by a statement of overriding consideration explaining why the project should still be approved. We address this requirement in Section 9.

8.4 Certification of the EIR

The Commission must conclude that the EIR is in compliance with CEQA before any final approval can be given to the application. This is to ensure that the environmental document is a comprehensive, accurate, and unbiased tool that the lead agency and other decisionmakers can use in addressing the merits of the project.

We find that this EIR has been completed in compliance with CEQA. It reflects the Commission's independent judgment and analysis on the issues addressed by the EIR, and the Commission has reviewed and considered the information in the EIR in formulating today's decision. We will certify the EIR.

9. Conclusion

The record before us provides insight into a changing natural gas storage market. While the noncore customers continue to exhibit demand for independent storage, and overall demand for natural gas in California is likely to increase in the near term, as-available backbone transmission capacity is less abundant than in the recent past. Once PG&E completes its proposed expansion of the Redwood Path, backbone transmission capacity should be sufficient to serve demand for storage withdrawals from an expanded Wild Goose facility and from Lodi at most times, but may be insufficient at times of peak demand. Imposing the reporting requirements discussed herein and prohibiting Wild Goose from entering into storage and storage-related transactions with its parent company or affiliates controlled by its parent company will mitigate the possibility that Wild Goose could exercise market power in the changing gas storage market. The EIR for the expansion project shows only one significant environmental impact that cannot be completely mitigated or avoided, the

permanent removal from production of approximately 5.8 acres of prime farmland. This one issue, in a project of great complexity, affects Butte County, the location of the existing storage facility. The Board of Supervisors has issued a resolution in support of the expansion project, and the project is generally consistent with the county's zoning and land use policies. In this situation it is appropriate to adopt a statement of overriding consideration and to authorize the Wild Goose expansion project, because we conclude it advances the policy goals of the state by providing additional natural gas storage capacity, which outweighs this environmental cost. Accordingly, we approve the amendment of Wild Goose's CPCN, and authorize the expansion project, subject to the conditions discussed in this decision.

Monitoring and enforcement of the Mitigation, Monitoring and Reporting Program (Attachment B as modified by Attachment C) is critical to our authorization, since under CEQA, the permit that is finally issued must be conditioned on completion of any adopted mitigation measures. We require Wild Goose to cooperate with staff and with the Commission's Executive Director in this regard, as further detailed in the Ordering Paragraphs.

10. Comments On Alternate Proposed Decision

This alternate proposed decision in this matter was mailed to the parties in accordance with Rule 77.6 of the Commission's Rules of Practice and Procedure. Comments are due on July 10, 2002 with reply comments due on July 12, 2002.

Comments were submitted by Wild Goose, Lodi, and TURN. We have revised the decision to correct clerical errors and omissions and to clarify portions of the discussion through minor, textual revisions but otherwise have not revised the decision.

11. Motion to Set Aside Submission

On July 8, 2002, Roseville Land filed a petition to set aside submission in order to convene a PHC to consider reopening the record on market power. The petition requests that the Commission take official notice of the exhibits attached to the petition as support for the relief requested (Ex. A through H). A July 9 ALJ Ruling shortened time to respond to the petition to July 11. Wild Goose filed a timely opposition. The opposition asks the Commission to take official notice of the exhibits attached (Ex. A through E).¹⁵

The petition argues that during the spring of 2002, after the parties had filed Phase I briefs, AEC and PanCanadian consummated their announced merger and that recent transcripts in the civil action between Roseville Land and Wild Goose show that EnCana, the new corporate parent, now owns and controls Wild Goose. The petition posits that the market power evidence in this proceeding must be reexamined in light of this development and urges the Commission to order a new market power study and further evidentiary hearings. As additional grounds for setting aside submission, the petition points to alleged indicia of poor corporate behavior: several ALJ rulings in an earlier Commission proceeding, A.00-08-050, which caused Wild Goose to amend that

¹⁵ Rule 73 of the Commission's Rules of Practice and Procedure provides: "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California." None of the attachments qualify for mandatory judicial notice under Evid. Code §452, except that we decline to take official notice of Ex. B to the petition, which is a newspaper article. Having taken official notice of the other documents, we apply our own discretion to determine what inferences, in any, should be drawn from them and what weight they should be given.

application;¹⁶ Wild Goose's negotiation on an easement with a Butte County landowner in advance of approval of the expansion project; and bank financing obtained without Commission approval for moveable equipment that Wild Goose leased at its existing facility.

We deny the petition. Roseville Land has not raised facts sufficient for us to reopen the record in this proceeding. The evidence on market power is sufficient for us to approve the expansion project as conditioned by the broad reporting requirements discussed herein and by prohibition Wild Goose from entering into storage transactions with its affiliates. Should we determine, in a future proceeding, that the EnCana merger requires other market power mitigations, we can require them at that time. With one exception, which we address below, Roseville Land's other assertions appear to lack merit when the underlying documents are considered fully. None of them warrant reopening the record.

The most troublesome allegation among those Roseville Land has put before us is the assertion that the EnCana merger has proceeded quickly from announcement to actuality though Wild Goose as yet has not sought the approval of this Commission. Section 851 et seq. require Commission approval before a change of control, or indirect change of control, of a public utility may occur. Section 854 provides that any change of control without Commission approval "shall be void and of no effect". We direct Wild Goose to file, within 45

¹⁶ A.00-08-050 sought authority to transfer control of Wild Goose from one entity to another within the same corporate family. The ALJ rulings inquired about the timing of the several aspects of the transaction relative to the request for approval, among other things. The Commission approved the transfer of control in D.01-05-029.

days of the date of this decision, an appropriate application for our review and determination.

Findings of Fact

1. The Wild Goose expansion project includes development of two additional reservoirs in Butte County to increase working inventory by 15 Bcf (to 29 Bcf) in order to increase the facility's injection peak injection capacity to 450 MMcf/d and increase its peak withdrawal capacity to 700 MMcf/d.

2. The primary components of the expansion project include: expansion of the existing Well Pad Site to allow the drilling of up to 16 new wells for injection, withdrawal and observation; construction in the existing right-of-way of a second 18-inch diameter bi-directional Storage Loop Pipeline and fiber optic cable to move gas from the reservoir to the Remote Facility; expansion of the existing Remote Facility Site, which is the operational base, or hub, for the Wild Goose storage facility; and construction of the new Line 400/401 Connection Pipeline and the new Delevan Interconnect Facility, to enable the proposed interconnection with PG&E's Line 400/401.

3. In the last decade, the California Legislature stated its policy support for independent gas storage by Assembly Bill (AB) 2744 (Stats. 1992, ch. 1337, uncoded). The Commission laid the groundwork for the development of independent gas storage in 1993 in the *Gas Storage Decision* (D.93-02-013, 1993 Cal. PUC LEXIS 66) and subsequent decisions.

4. Gas storage can exert downward pressure on border price increases attributable to upstream interstate and intrastate transmission constraints (e.g. at Malin and Topock) and likewise, can serve as a substitute for interstate gas during times of high demand.

5. The failure of large customers to inject sufficient gas into storage in California is one factor that contributed to the large price increases for natural gas during the winter of 2000/2001.

6. An undetermined amount of new electric generation in California and the Pacific Northwest will increase the demand for natural gas and related services beginning in 2002.

7. Customer interest in Wild Goose's storage services is demonstrated by the following: the existing facility is fully contracted through March 2005, with some contracts continuing into 2006 and an open season for expansion capacity has resulted in five binding precedent agreements.

8. The letters of support from various persons and local entities and the resolutions of support from the Boards of Supervisors of Butte and Colusa Counties indicate broad community support for the expansion project. Roseville Land, which is involved in civil litigation with Wild Goose, is the sole "community" opponent of the project.

9. Wild Goose's market power assessment (Ex. 9) shows a highly concentrated market for storage injection and withdrawal and significant market share for Wild Goose.

10. After expansion, Wild Goose would have a higher market share.

11. Taken together, the other, "mitigating" factors discussed in Ex. 9 are inconclusive as to whether Wild Goose can exercise market power.

12. To ensure Wild Goose does not exercise market power in the storage market, Wild Goose should be authorized to offer expansion services at market-based rates only if it is prohibited from entering into storage and hub services transactions with its parent company or affiliates controlled by its parent

company, and if it complies with the reporting requirements described in this decision.

13. The Commission should revise, in R.01-01-001 (a proceeding to which Wild Goose is a respondent) its 1997 Affiliates Transactions Rules to address issues relevant to independent storage owners and operators. Wild Goose is currently exempt from those Rules and should remain so, subject to further consideration by the Commission in R.01-01-001.

14. Wild Goose is a Delaware corporation; in 1996 it obtained authorization from the California Secretary of State to transact intrastate business in California in conformance with the law of this state.

15. Wild Goose's storage, whether provided to noncore customers or core aggregators, is the functional equivalent of storage owned by PG&E or by SoCalGas and its underground storage reservoir and associated pipelines, compressors, and equipment are "gas plant". Wild Goose is a "gas corporation" owing and operating such "gas plant" for compensation.

16. The Commission has interpreted §§ 454 and 489 to authorize market-based rate authority, under certain situations.

17. Wild Goose has expertise, and access to expertise, in natural gas system design and development. PG&E should allow Wild Goose to participate in developing the details of the interconnection and to undertake the construction, or portions of it, consistent with safe operation of the gas system network.

18. The proposed Line 400/401 interconnect will be a second service connection for the Wild Goose facility, and thus, its components constitute special facilities for which Wild Goose should pay.

19. Wild Goose should provide the Director of the Commission's Energy Division a list of interconnection facilities once they have been determined and serve that list on the service list for this proceeding.

20. Wild Goose and PG&E may determine whether to draft a new, separate operating and balancing agreement or to amend the one that governs the existing facility's operations. The agreement must be in place before the expansion project commences operations. Wild Goose should provide the Director of the Commission's Energy Division with a copy of the agreement and serve it on the service list for this proceeding.

21. It appears that adequate backbone capacity exists to accommodate all storage injections; however, the backbone may be unable to accommodate full withdrawals from both the Wild Goose facility and the Lodi facility during periods of peak demand.

22. Lodi's proposal for pro rata allocation of as-available transportation capacity among all customers, including storage customers, during times when capacity is constrained, provides the most competitively neutral approach advanced on this record.

23. PG&E should submit by advice letter, within 45 days of the effective date of this decision, proposed tariffs, or amendments to existing tariffs, that address pro ration of as-available capacity among all customers during times when insufficient as-available capacity exists to serve all requests for it. The tariff proposal should comply with the principles discussed herein.

24. The complexity of the issues related to the need for expansion of the backbone, and alternatives to expansion, requires a focused but more generic inquiry than that presented by this proceeding; we will not order a Phase III in this proceeding.

25. Staff of the Environmental Projects Unit of the Commission's Energy Division, after review of Wild Goose's application/PEA, determined that an EIR was required under CEQA, and caused a Draft and Final EIR to be prepared. MHA Environmental Consulting, Inc., under contract to the Commission, assisted staff in the EIR's preparation.

26. As described in this decision, staff prepared the EIR in accordance with the substantive and procedural requirements of CEQA.

27. Since the Well Pad Site, the Remote Facility Site and the interconnection with Line 400/401 have fixed locations, the principle project alternatives concern two alternative alignments of the new pipeline linking the Butte County facility with Line 400/401.

28. The Central Crossing is the pipeline route preferred over the alternatives analyzed because it minimizes impacts to wetlands and minimizes potential impacts associated with hazards, noise and aesthetics in the area by avoiding residential land uses.

29. Under the EIR's preferred alternative, all significant environmental impacts can be mitigated to a less than significant level except one, the permanent loss of a minimum of 5.8 acres of prime farmland to non-agricultural uses, which is unavoidable.

30. The Mitigation, Monitoring and Reporting Program (Attachment B as modified by Attachment C) substantially conforms to the recommendations in the EIR for measures required to avoid or mitigate the significant environmental effects of the project that can be avoided or mitigated.

31. The EIR reflects the Commission's independent judgment and analysis on the issues addressed in the EIR, and the Commission has reviewed and considered the information in the EIR before issuing this decision on the project.

32. With the exception of Ex. B to Roseville Land's petition to set aside submission, we may take official notice of all exhibits attached to the petition and Wild Goose's opposition.

33. Roseville Land's petition to set aside submission has not raised facts sufficient to warrant reopening the record in this proceeding.

Conclusions of Law

1. Wild Goose has provided the showing required by §§ 1001 and 1002.
2. Wild Goose has complied with § 704.
3. Wild Goose meets the definitions of §§ 221 and 222.
4. Wild Goose, as a public utility, may exercise the public utility right of eminent domain, consistent with law.
5. The *Gas Storage Decision* provides that PG&E's Gas Rule 2 is a reasonable model for distinguishing between standard and special facilities and we should rely upon that rule in deciding the nature of the expansion project facilities.
6. The as-available transmission allocation that PG&E proposes we adopt when capacity constraints exist would require amendment of the Gas Storage Rules discussed in this decision to authorize storage withdrawals to receive a lower priority than other transportation customers.
7. The as-available transmission allocation that Wild Goose proposes we adopt when capacity constraints exist could require amendment of the Gas Storage Rules discussed in this decision to authorize storage withdrawals to receive a higher priority than other transportation customers.
8. Lodi's proposal for allocation of constrained as-available transportation capacity is fair and consistent with the Gas Storage Rules.

9. Because Wild Goose does not have captive customers who are financing the expansion project, we should waive the cost cap requirement of Pub. Util. Code § 1005.5 for this application.

10. The EIR, which consists of two separate documents, the Draft EIR and the Final EIR, should be certified.

11. The EIR assumes Wild Goose will operate its facilities within the parameters of the required permits and Wild Goose should do so.

12. The EIR assumes that operations in excess of permitted levels will require Wild Goose to obtain new discretionary permits and additional environmental review, and Wild Goose should comply.

13. According to the EIR, one effect of the project, the permanent loss of a minimum of 5.8 acres of prime farmland to non-agricultural uses, cannot be mitigated to a less than significant level and requires a statement of overriding consideration for the Commission to approve the project. The Boards of Supervisors of both counties have issued resolutions in support of the project, and the project is generally consistent with the counties' zoning and land use policies, and advances the policy goals of the state by providing additional natural gas storage capacity.

14. Because the statewide benefits of competitive gas storage facilities outweigh the one environmental impact of the project that cannot be mitigated to a less than significant level, we adopt a statement of overriding consideration on this one issue.

15. With respect to each significant impact of the project that the EIR identifies as a significant impact that can be reduced to a level that is not significant, the mitigation, changes, or alterations proposed should be incorporated into the

project to mitigate or avoid the significant impacts on the environment as a condition of this CPCN.

16. With respect to the mitigations, changes or alterations referred to in Conclusion of Law 15 that are within the responsibility and jurisdiction of another public agency, each such mitigation, change or alteration has been, or can and should be adopted by that other agency.

17. The Mitigation, Monitoring and Reporting Program in the FEIR (Mitigation Program), appended to this decision as Attachment B and amended by Attachment C, should be adopted in satisfaction of the requirements of Pub. Res. Code § 21081.6.

18. The Executive Director, or his designated staff or outside staff representative, should supervise and oversee construction of the project insofar as it relates to implementation and enforcement of the Mitigation Program.

19. The CPCN granted herein should be conditioned upon the adoption, implementation and enforcement of the environmental mitigation measures set forth in the EIR and summarized in the Mitigation Program.

20. If Wild Goose makes any changes to the proposed route or other project components, Wild Goose should apply to the Executive Director or his designated staff for approval of a variance.

21. Wild Goose should reimburse the Commission for the amount expended by the Commission for its expenses, including but not limited to special studies, staff, or Commission staff costs (including allocable indirect costs) directly attributable to monitoring and enforcement of the implementation of the Mitigation Program.

22. In monitoring the implementation of the environmental mitigation measures described in the EIR and summarized the Mitigation Program, the

Executive Director should attribute the acts and omissions of Wild Goose's employees, contractors, subcontractors, or other agents to Wild Goose.

23. Wild Goose's application for a CPCN authorizing it to develop, construct, and operate the expansion project, as set forth in its application and the EIR, with the with the Line 400/401 Connection to follow the preferred route identified in the EIR as the Central Crossing, and to provide firm and interruptible storage services at market based rates, should be granted as conditioned by this decision.

24. Roseville Land's petition to set aside submission should be denied.

O R D E R

IT IS ORDERED that:

1. The Environmental Impact Report (EIR), which consists of two separate documents, the Draft EIR and the Final EIR, is certified.

2. Wild Goose Storage Inc. (Wild Goose) is granted an amendment to its certificate of public convenience and necessity (CPCN) authorizing it to develop, construct and operate an expansion of its existing natural gas storage facility, as set forth in its application and the EIR, with the Line 400/401 Connection to follow the preferred route identified in the EIR as the Central Crossing, and to provide firm and interruptible storage services at market-based rates (the expansion project), subject to the terms and conditions set forth below.

3. The authority granted in Ordering Paragraph 2 is conditioned upon Wild Goose's compliance with the following rules and reporting conditions:

- (a) Wild Goose shall not engage in any storage or hub services transactions with its parent company or any affiliated entity owned or controlled by its parent company;

- (b) Wild Goose shall fully comply with the Commission's General Order (GO) 65-A, GO 77-K, and GO 104-A and may no longer file a simplified report on affiliate activities in compliance with Public Utilities Code 587.
- (c) Wild Goose shall promptly advise the California Public Utilities Commission (Commission) of the following changes in status that reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing: (i) Wild Goose's own purchase of natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent, Alberta Energy Company Ltd. (Alberta Energy, or a successor); or (iii) merger or other acquisition involving affiliates of Alberta Energy or a successor and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation.
- (d) Wild Goose shall provide the Commission with true copies of all service agreements for short-term transactions (one year or less) within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales. If Wild Goose enters into multiple service agreements within a 30-day period, Wild Goose may file these service agreements together so as to conserve the resources both of Wild Goose and the Commission. The quarterly transactions summaries shall list, for all tariffed services, the purchaser, the transaction period, the type of service (e.g. firm, interruptible, balancing, etc.), the rate, the applicable volume, whether there is an affiliate relationship between Wild Goose and the customer, and the total charge to the customer.
- (e) Wild Goose shall provide the Commission with true copies of all service agreements for long-term transactions (longer than one year), within 30 days of the date of commencement of service. To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's records, long-term transaction service agreements shall not be filed together with short-term transaction summaries.

4. All reports and documents required by Ordering Paragraph 3 shall be provided to the Director of the Commission's Energy Division within 60 days of the effective date of this decision on an initial basis and thereafter, as specified above or by the applicable statute, GO, rule, or other Commission decision.

5. Wild Goose shall provide the Director of the Commission's Energy Division with a list of interconnection facilities, once they have been determined, and serve the list on the service list for this proceeding.

6. Before commencing expansion project service to customers, Wild Goose shall:

(a) file with the Commission an advice letter and accompanying tariff schedules which amend its tariffs as necessary to offer authorized storage services via the Line 400/401 interconnect, and

(b) enter into an operation and balancing agreement with Pacific Gas and Electric Company (PG&E) for the expansion project, or amend the existing operation and balancing agreement to include the expansion project. Wild Goose shall provide the Director of the Commission's Energy Division with a copy of the agreement and serve it on the service list for this proceeding.

7. We adopt a statement of overriding consideration for one significant environmental impact of the expansion project, the permanent removal from production of a minimum of 5.8 acres of prime farmland, which cannot be mitigated to a less than significant level, because we conclude that the expansion of the Wild Goose natural gas storage facility advances the policy goals of the state by providing additional natural gas storage capacity and outweighs the environment cost.

8. The authority granted in Ordering Paragraph 2, is conditioned upon the adoption and implementation of the environmental mitigation measures set forth in the EIR, including the Mitigation, Monitoring and Reporting Program

(Mitigation Program) appended to this decision as Attachment B and modified by Attachment C, and Wild Goose shall fully implement the Mitigation Program.

9. The Mitigation Program described in Ordering Paragraph 8 is adopted in satisfaction of the requirements of Pub. Res. Code § 21081.6.

10. With the exception of the significant environmental impact identified in Ordering Paragraph 7, the EIR finds that all other significant environmental impacts of the expansion project can be reduced to a level that is not significant, and as a condition of this amended CPCN, all mitigations, changes, or alterations identified in the EIR shall be made a part of the expansion project to mitigate or avoid the significant impacts on the environment.

11. With respect to those mitigations, changes, or alterations referred to in Ordering Paragraph 8 that are within the responsibility and jurisdiction of another public agency, each mitigation, change, or alteration has been, or can and should be adopted by that other agency.

12. Wild Goose shall operate its facilities within the parameters of the required permits, and operations in excess of permitted levels require Wild Goose to obtain new discretionary permits and additional environmental review.

13. The Executive Director, or his designated staff or outside staff representative, shall supervise and oversee construction of the expansion project insofar as it relates to monitoring and enforcement of the mitigation measures. The Executive Director shall track and record direct expenses and time devoted to ascertain the costs to the Commission of monitoring the mitigation measures. The Executive Director is authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, environmental monitoring, and environmental mitigation supervision of the construction of the expansion project. Such staff

may be individually qualified professional environmental monitors or may be employed by one or more firms or organizations. No person or organization shall be so employed who beneficially owns any security of, or has received during the past five years or is presently entitled to receive at any time in the future more than a de minimus amount of compensation for consulting services from Wild Goose, Alberta Energy or its successor, or other affiliates of Alberta Energy or its successor.

14. In monitoring implementation of the mitigation measures, the Executive Director should attribute the acts and omissions of Wild Goose's employees, contractors, subcontractors, or other agents to Wild Goose. Wild Goose shall comply with all orders and directives of the Executive Director concerning implementation of the mitigation measures.

15. Wild Goose shall not commence actual construction of the expansion project until it has entered into a cost reimbursement agreement with the Commission for the recovery from Wild Goose of the costs of monitoring implementation of the mitigation measures, including but not limited to special studies, staff, or Commission staff costs (including allocable indirect costs) directly attributable to such monitoring. The Executive Director is authorized to enter into an agreement with Wild Goose that provides for such reimbursement on terms and conditions consistent with this decision in form satisfactory to the Executive Director. The Executive Director shall evidence his approval of such agreement by his Resolution. The terms and conditions of such agreement shall be deemed conditions of approval of the application to the same extent as if they were set forth in full in this decision.

16. Disputes concerning directives of the Executive Director to Wild Goose during the course of actual construction of the expansion project shall be

determined by the Executive Director, as evidenced by his Resolution. Any person aggrieved by any such Resolution may appeal to the Commission, pursuant to Rule 9(a) of the Commission's Rules of Practice and Procedure. The Executive Director's Resolution shall remain in full force and effect until affirmed, modified or vacated by the Commission.

17. The Executive Director shall file a Notice of Determination for the expansion project as required by the California Environmental Quality Act and the regulations promulgated pursuant thereto.

18. If Wild Goose makes any changes to the proposed route or other project components, Wild Goose shall apply to the Executive Director or his designated staff for approval of a variance.

19. If Wild Goose seeks to expand or modify its physical facilities to the extent that discretionary approval by a public agency is required, it shall consult with the Commission prior to filing an application for such approval, so that the Commission may ensure that the appropriate environmental analysis of the impacts of Wild Goose's specific proposal may be performed.

20. Within 60 days of the effective date of this order, Wild Goose shall file a written acceptance of the amended CPCN granted in Ordering Paragraph 2.

21. The tariff proposal should comply with the following:

- a) Pro-rationing should compare the as-available transportation nominations on the backbone system from independent storage customers to the total non-storage as-available transportation nominations;
- b) Pro-rationing should occur at each nomination cycle during the day based on the backbone system capacity available at that time;
- c) The non-bumping rule (PG&E's Gas Rule 21.B.3) should be honored;

- d) Pro-rationing between storage withdrawals and other as-available transportation capacity should be based on the volumes nominated, not on the price bid for that capacity.

22. Within 45 days of the effective date of this decision, PG&E shall file by advice letter, proposed tariffs, or amendments to existing tariffs, that address, consistent with this decision, pro ration of as-available transportation capacity among all customers, during times when insufficient as-available capacity exists to serve all requests for it.

23. The stay of R.01-01-001 is lifted in order to consider revision to the 1997 Affiliates Transactions Rules, as they apply to independent storage facilities.

24. The petition to set aside submission filed on July 8, 2002 by Roseville Land Development Corporation is denied.

25. Within 45 days of the date of this order, Wild Goose shall file an appropriate application under Pub. Util. Code §§ 851 et seq. for review by this Commission of the impact on Wild Goose of the merger of AEC and PanCanadian Energy Company, forming EnCana Corporation, and for any and all Commission authority required under those statutes.

26. This proceeding is closed.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

HENRY M. DUQUE
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

We will file a joint dissent.

/s/ LORETTA M. LYNCH

President

/s/ CARL W. WOOD
Commissioner

I will file a concurrence.

/s/ GEOFFREY F. BROWN
Commissioner

ATTACHMENT A
(List of Appearances)

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A.01-06-029 COM/MP1/JF2/acb

For: Northern California Generation Coalition	For: CPUC
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ATTACHMENT A
(List of Appearances)

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Patricia I. Towne 1057 LA SALLE DRIVE SACRAMENTO CA 95864 (916) 485-0811 For: KEVIN D. TOWNE and PATRICIA I. TOWNE REVOCABLE LIVING TRUST, DATED JUNE 28, 1996	

(END OF ATTACHMENT A)

ATTACHMENT B
(Mitigation, Monitoring and Reporting Program)

ATTACHMENT C
(ERRATA for WGSJ Expansion Project FEIR MMRP)

A.01-06-029

D.02-07-036

Commissioner Geoffrey F. Brown, Concurring:

I support Commissioner Peevey's alternate authorizing Wild Goose Storage's expansion project for additional storage capacity and related services at its storage facility in Butte County. I believe gas storage is essential if we are to meet California's need for natural gas. The expansion of the Wild Goose Facility will contribute importantly to ensuring such supplies for California's future.

Although I am mindful of the danger of affiliate favoritism, I believe that the restrictions set forth in this decision between Wild Goose and its parent are sufficient. Moreover I believe we can thoroughly address affiliate relationships in the rulemaking proceeding mentioned in this decision.

While it is important to protect against affiliate abuses, we cannot predict that it will occur in this case. If we find that Wild Goose or any utility has exercised anti-competitive behavior, this Commission reserves the authority to penalize such actions. However, delaying this project, so vital to California's energy needs, based on a hypothetical possibility of affiliate abuse is not in the public interest.

/s/ GEOFFREY F. BROWN
GEOFFREY F. BROWN
Commissioner

San Francisco, California
July 17, 2002